IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003906

First-tier Tribunal Nos: PA/53417/2022
IA/08069/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MH
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms R Akther, instructed by Taj Uddin Shah Taj Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 24 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant, a citizen of Bangladesh, born on 1 January 1969, who claimed to have arrived in the UK in November 2005, initially claimed asylum in 2016, withdrawing this application in 2017. The appellant made a human rights application in 2018 which was refused with no in country right of appeal. The appellant made a fresh asylum claim on 18 January 2021. The respondent refused that decision on 26 July 2022.

The First-tier Tribunal

2. The appellant's appeal against the respondent's refusal was considered by the First-tier Tribunal on 20 June 2023. In a decision promulgated on 14 July 2023, Judge Hussain ("the judge") dismissed the appellant's appeal on all grounds.

3. The basis of the appellant's asylum claim was that he feared the Awami League on account of his claimed connection to the student wing of Jamaat-e-Islami, Bangladesh Islami Chattra Shibir (BICS). The appellant also claimed to fear his nephew as a result of a land dispute. Judge Hussain did not accept that the appellant was a member of BICS nor that he had faced problems in relation to this membership (paragraph [43] of the decision). The judge was further not satisfied that the claimed land dispute fell within the remit of the Refugee Convention, and the judge was satisfied that the appellant could seek protection of the Bangladeshi authorities or in the alternative he could relocate [paragraphs [46] & [47]]. The judge also dismissed the appellant's appeal on Article 8 grounds [paragraphs [48] and [49]].

Grounds of Appeal

4. The appellant appeals with permission on the following grounds:

   (1) That the First-tier Tribunal applied the wrong standard of proof;

   (2) That the judge's credibility findings were illogical as the judge found that "*the appellant has not produced a single item of evidence to show any of his activities in Bangladesh*" whereas corroboration is not required. In addition, it was argued that the judge incorrectly used his experience of hearing other Bangladeshi appeals. The grounds also relied on background country information; it being argued that 'someone like the appellant' would be of interest to the authorities.

The Hearing

5. The appeal came before me. Prior to the hearing Mr Melvin for the respondent, submitted a skeleton argument dated 23 October 2023. I heard submissions from both representatives.

Discussion

6. I have reminded myself of the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an

appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in **Volpi & Anor v Volpi [2022] EWCA Civ 464** at [2] as follows:

"i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

7. In the earlier case of **Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5** at [114]: the Court of Appeal similarly advised appropriate restraint in the approach to first instance decisions:

"i. *The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.*
ii. The trial is not a dress rehearsal. It is the first and last night of the show.
iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."

Ground 1

8. It was conceded by Ms Akther at the hearing before me that ground 1 was withdrawn. Even if that were not the case, there is no merit in ground 1. The judge very clearly directed himself at paragraph [37] and applied the correct standard of proof. It was not necessary for the judge specifically to use the words "lower standard". Ground 1 is not made out.

Ground 2

9. Ms Akther relied on the grounds of appeal and expanded on those grounds. It was her submission that the judge's findings were tainted because the judge cited his experience of other cases, as opposed to the judge considering the appeal before him on its own merits.

10. It was Ms Akther's submissions that the there was a perception of bias as the judge "did not see what he sees in other cases". It was argued that the judge erred in requiring corroboration and that the lack of evidence had to be considered in the context of the appellant's party being banned in Bangladesh. Therefore the appellant was not in a position to produce evidence and in any event was not required to do so.

11. Ms Akther drew the Tribunal's attention to various sections of the respondent's country policy and information note (CPIN), including at 7.3.4, 7.3.7, 10.2.2, 10.2.3 (but not exclusively confined to those paragraphs). It was Ms Akther's submission that the judge failed to consider this evidence.

12. The judge made alternative findings, that even if it were accepted, which the judge did not, that the appellant was a member of the BICS, the judge found that the appellant was at most a low-level member, some 17 years previously and relied on the respondent's country policy information that in general low-level members of opposition groups were unlikely to be of ongoing interest to the authorities.

13. Ms Akhter argued that the judge's alternative findings were not sustainable given the contents of the background country information including the CPIN, which highlighted the sustained harassment by the Awami League of all opposition and the complete intolerance of such opposition. It was argued that one did not have to be a member to be at risk, but rather that the appellant would be perceived to be in opposition. It was further submitted that the appellant had not needed to show high level membership and that even being a low-level member would have put him at risk.

14. Although the judge at paragraph [44] set out an extract from the respondent's CPIN which indicated that in general low-level members of opposition groups were unlikely to be of ongoing interest, it was Ms Akther's submission that this was contrary to the body of the evidence in the Home Office Country Information.

15. The judge's findings are set out at [39] to [45],the judge having considered all of the evidence, including the appellant's oral evidence and a letter from Md Ismail Hussain, dated 19 October 2020, which was obtained by the appellant's brother, as set out at paragraphs [29] to [30] of the decision and reasons.

16. The judge at [39] considered the letter from Md Ismail Hussain, including noting that this was the only supporting information produced by the appellant. The judge took into consideration that Bangladesh was incorrectly spelt in the letter,

the judge sharing the concerns of the respondent that this was not what would be expected from a letter emanating from a major political party. The judge observed that the appellant was aware of the respondent's concerns in relation to this letter and would have been in a position to obtain a fresh letter to support his claim, but had not done so.

17. The judge further noted that the letter stated that the appellant had left Bangladesh for a "genuine reason" but the letter fails to elaborate on what that reason was. The judge noted that the appellant had left Bangladesh, on his own evidence, in 2005, when the Awami League were not in power and therefore the judge was saying, in effect, that it was not clear what the "genuine reason" for him leaving was. Although the appellant said that there was political turmoil, he failed to explain why this resulted in him leaving Bangladesh.

18. The judge went on at [40] to find the appellant's evidence, in relation to the claimed attacks on him by the Awami League, to be "vague and unparticularised". Although the appellant had claimed in oral evidence that he was attacked over ten times in 1993 and twice in 2005 with nothing in between, the judge took into account that the background country information indicated ongoing political violence since the country came into existence. The judge noted the lack of any evidence from Bangladesh and the lack of any evidence of Sur Place activities in the UK together with the appellant's failure to claim asylum until a decade after his arrival here.

19. The judge went on to consider in the alternative at [44] that if the appellant was a low-level member, that was some seventeen years previously and relied on the CPIN in relation to low-level members or opposition groups. The judge took judicial notice of his experience and noted at [45] that the appellant had not produced evidence of any outstanding court cases against him, which the judge took judicial notice of, was a feature of cases involving BICS and the Awami League. The judge was satisfied that if, in the alternative, the appellant was a low-level member this did not bring him within the category of individuals who would be at risk.

20. Although Ms Akhter referred the Tribunal to the background country evidence of the treatment of opposition parties in Bangladesh the judge had that evidence before him (including as highlighted in the appellant's appeal skeleton argument). Whilst, Mr Melvin accepted that activists from opposition parties would face difficulties (and the judge made no findings which would indicate he disputed this), I am satisfied that the judge did not fall into any material error in finding, in terms, that this appellant was not such an activist and therefore not at risk.

21. The appellant, who was last in Bangladesh by his own evidence, seventeen years ago, with no evidence of any contact or that he would resume this activity, was not in the category of those who would be at risk on return, even if his claim was accepted at its highest (which the judge did not). The appellant is now a 55 year old gentleman who is basing his asylum claim on claimed involvement in the student wing, which he indicated he joined in 1993. Even at its highest, it is difficult to see how the appellant's appeal could have succeeded on the facts and evidence before the judge.

22. The judge's primary findings, that the appellant was not credible and that he had not shown that he had been involved with BICS are adequately reasoned. What matters is whether the decision under appeal is one that no reasonable judge could have reached and not whether the appellate court considers that it would have reached a different conclusion. Whilst the judge's comments in relation to taking judicial notice of matters in Bangladesh might have been better expressed, even if this was an error, it was not material when considered in the context of the judge's negative credibility findings.

23. Whilst it is of course trite law that corroboration is not required, the judge was entitled to take into account that there was for example no evidence of any attendance at demonstrations, in Bangladesh where such ought reasonably to have been available. In addition, as the judge highlighted, the appellant would have been aware that the respondent did not accept that the one piece of supportive evidence provided could be relied on for the reasons the judge gave and it was open to the appellant to provide further evidence to address these concerns, but the appellant chose not to. The judge was entitled to reach the findings he did in the round in not finding the appellant credible.

24. The judge also, at [44] took into account, in not finding the appellant credible, that the appellant in oral evidence claimed that he enrolled as a member in 1993, whereas the letter from Mr Hussain stated that it was 1995.

25. It is not the case that the judge's findings were tainted by his reference to other cases. The judge has plainly considered this case on its own facts and evidence, or lack thereof, and reached sustainable findings which were neither irrational nor inadequately reasoned.

Decision

26. The appellant's grounds of appeal are not made out. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellant's appeal is dismissed.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023